Supreme Court, U.S.
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Supreme Court Civil Action

Supreme Court of the United States

Term Beginning October 1996

Fred L. Murray, Jr. (PRO SE)
Petitioner,
vs.
Marmon Holdings Inc., GL Sub Co., Marmon Industrial Corp., Trans Union Corp., Ameri-Fact Inc., and Other Unknown Related Entities.
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR WRIT OF CERTIORARI

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HIPP

Questions Presented for Review

I. Is the test to determine whether the Fair Credit Reporting Act was violated a test for "accuracy" or a test for "due process," and whether the issue of accuracy is secondary to the issue of due process? And similarly, whether (1) *what the subscriber transmits to the agency* and (2) *what the agency is to report* are two separate and distinct issues?

II. Did the respondents assure maximum possible accuracy, follow investigation procedures, follow the *FTC vs. TRW (1991)* Correction and Reinsertion Procedures, clearly indicate consumer dispute statements or codifications, follow reasonable procedures, and or issue reports for nonenumerated purposes?

III. Did the respondents lose their "qualified immunity" for defamation, invasion, and negligence allegations by willfully, maliciously, and/or evilly violating the Consumer Credit Protection Act?

IV. If a consumer reporting agency issued consumer reports to meet percentage quotas, to increase advertising effectiveness, to obtain subscriber contracts, to gain competitive advantage, to increase profits, and to enrich itself, would the agency be liable for fraud and unjust enrichment?

V. Are consumer reporting agencies "creditors" or actionable under the ECOA, FCBA, FDCPA, and the TILA because they (1) participate in the decision to extend, renew, or continue credit, (2) arrange for the extension of credit (3) participate in contract formation with actual creditors, (4) have knowledge of credit approval terms, and (5) receive consideration for referring their own customer, the consumer, to an actual creditor?

VI. Can a consumer reporting agency interfere with the rights to equal credit opportunities of "protected classes" as defined by the ECOA and the Civil Rights Act and whether blacks, in particular, would be disproportionately damaged by adverse credit information?

VII. Is there a "fiduciary relationship" between consumer reporting agencies and the consumers on which the agencies report?

VIII. If a disputed account that was once closed is reopened under the same account number, does the creditor impliedly accept the consumer's version of the dispute?

IX. Do account cancellation proceedings and failure to cite the position of the collection agency preclude summary judgment?

X. Did the Eleventh Circuit Court of Appeals, in *Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151, 1158, n.6 (C.A.11.Fla.1991)*, err by giving significant weight to the creditor's "attitude" toward the consumer's account, because in *Swoager v. Credit Bureau of Greater St. Petersburg, Florida, 608 F.Supp. 972, 976, n. 3-4 (D.C.Fla. 1985)* the Court found that "the creditor's viewpoint was obviously biased"?

XI. Is a pro se litigant's self-designed and self-executed survey evidence for the purposes of summary judgment and admissible evidence for trial?

XII. Are the respondents, the District Court, the First Circuit Court of Appeals, and all attorneys involved in this case subject to compensatory and punitive sanctions, fines, and/or disciplinary action for rule-breaking litigation tactics, including the respondent's fraud on the court and the District Court order that "no further motions" be filed by Murray?

Table of Contents

Question Presented for Review i

Table of Authorities iv

Supreme Court Jurisdiction 1

Summary of Key Cases, Statutes, and Authorities 1

Statement of the Case 2

Argument for Allowance of the Writ 7

Authorities and Argument Concerning Signature, Opinion, Publication, Oral Argument, and Lack of Procedural Due Process 7

Authorities and Argument Concerning Withdrawal of Counsel . 8

Authorities and Argument Concerning Appearance of an Attorney 8

Authorities and Argument Concerning Maximum Accuracy 9

Authorities and Argument Concerning Due Process Requirements for Consumer Reporting Agencies 10

Authorities and Argument Concerning Failure to Argue 10

Conclusion 11

Consumer Reporting News Articles 11

Credit Reporting Abuses 12

Table of Authorities

Cases

Alexander v. Moore & Associates, Inc., 553 F.Supp. 948 (D.C.Hawaii 1982) 9

Barton v. Automobile Ins. Co. of Hartford, Conn., 63 F.2d 631, certiorari denied 53 S.Ct. 786, 289 U.S. 755, 77 L.Ed. 1499 (C.C.A.1 (Mass.) 1933) 7

Bryant v. TRW, Inc., 487 F.Supp. 1234, affirmed 689 F.2d 72 at 78 Division 2 (D.C.Mich.1982) 10

Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151 (C.A.11.Fla.1991) ii

Com. v. Agiasottelis, 142 N.E.2d 386, 336 Mass. 12 (Mass. 1957) 10

Com. v. Bickford, 471 N.E.2d 1295, 393 Mass. 1006 (Mass. 1984) 7

Cotto v. Jenney, 721 F.Supp. 5 (D.Mass.1989) 1, 9

Eastern Sav. Bank v. City of Salem, 597 N.E.2d 55, 33 Mass.App.Ct. 140, review denied 600 N.E.2d 1000, 413 Mass. 1106 (Mass.App.Ct. 1992) . 7

FTC v. TRW, 784 F.Supp. 361 (N.D.Tex.1991) . . . . . i, 1, 2, 9

Houston v. TRW Information Services, Inc., 707 F.Supp. 689 (S.D.N.Y. 1989) 9, 10

Kiblen v. Pickle, 653 P.2d 1338, 33 Wash.App. 387 (Wash.) 10

Koropoulos v. Credit Bureaus, Inc., 734 F.2d 37 (C.A.D.C.1984) 1, 9

Mcphee v. Chilton, 468 F.Supp. 494, 497 (D.Conn.1978) 10

Miranda 10

Rudnicki v. Gottlieb, 15 Mass.App.Dec. 63 (Mass.App.Div. 1957) 7

Stevenson v. TRW, Inc., 987 F.2d 288 at 293 n. 2-3 (C.A.5 Tex. 1993) . 10

Swoager v. Credit Bureau of Greater St. Petersburg, Florida, 608 F.Supp. 972 (D.C.Fla. 1985) . . . . . ii, 9, 10

Symmons v. O'Keeffe, 644 N.E.2d 631, 419 Mass. 288 (Mass. 1995) . . . 10

Taylor v. McKeithen, 1972, 92 S.Ct. 1980, 407 U.S. 191, 32 L.Ed.2d 648, conformed to, C.A.5th, 1874, 499 F.2d 893 7

Thompson v. San Antonio Retail Merchants Ass'n, 682 F.2d 509, 513 (C.A.Tex.1982) 9

Vargas v. McNamara, 608 F.2d 15 (C.A.1 (Mass.) 1979) 10

Walsh v. Chestnut Hill Bank and Trust Co., 607 N.E.2d 737, 414 Mass. 283 (Mass. 1993) 10

Zuckerman v. Aetna Life and Casualty Co., 1981 Mass.App.Div. 63 (Mass.App.Div. 1981) 7

Constitutional Provisions

116 Cong. Rec. 35940, Sen. Proxmire (1970) 9

U.S.C.A. Const.Amend. 14 7

Statutory Provisions

28 U.S.C.A. § 1331 1

28 U.S.C.A. § 1332 1

43B M.G.L.A. 10

Civil Rights Act . . . . . i, 1

Consumer Credit Protection Act 15 U.S.C.A. §§1601-1700 . . . . . i, 1, 2

Equal Credit Opportunity Act . . . . . i, 1

Fair Credit Billing Act i

Fair Credit Reporting Act ..... i, 9, 10

Fair Debt Collections Practices Act i

M.G.L.A. c. 272, Sec. 99 7

Massachusetts Consumer Protection Act 2, 6

Truth In Lending Act i

Regulatory Provisions

ABA Canons of Professional Ethics, Canon 15 8

ABA Canons of Professional Ethics, Canon 16 8

ABA Code of Professional Responsibility, Canon 7; EC7-23 10

ABA Model Code of Professional Responsibility, DR 2-110 8

ABA Model Rules of Professional Conduct, Rule 1.16 8

Compliance With The Fair Credit Reporting Act, written by The Federal Trade Commission (rev.2d ed. 1977) 1, 10

Credit Reporting Abuses 11, 12

Federal Rules of Appellate Procedure, Rule 16 10

Federal Rules of Appellate Procedure, Rule 25 10

Federal Rules of Appellate Procedure, Rule 34 7

Federal Rules of Appellate Procedure, Rule 36 7

Federal Rules of Appellate Procedure, Rule 46 8

Federal Rules of Civil Procedure, Rule 11 7

Federal Rules of Civil Procedure, Rule 60 7

Federal Rules of Civil Procedure, Rule 7 7

First Circuit Local Rule 34.1 7

First Circuit Local Rule 36.1 7

First Circuit Local Rule 36.2 7

First Circuit Local Rule 45 8

First Circuit Local Rule 46.4 8

FTC v. Trans Union, D-9255 ..... 1, 2, 4

Internal Operating Procedures of the First Circuit Procedure II 8

Rules for the Regulation of Practice before Full Court, Rule 13 10

Supreme Court Rule 13 1

Miscellaneous

Consumer Reporting New Articles 11

FTC Reports Credit Reporting is the No. 1 Source of Complaints 11

Habeas Corpus Cases 10

Newsweek Calls Credit Reporting Agencies "Consumer Enemy Number One" 12

Quota System for Derogatory Information Used by Credit Reporting Agencies 12

Representative Joseph P. Kennedy (D-Mass) on Crediting Reporting Practices 11

Texas Attorney General Dan Morales on Credit Reporting Practices .. 11

The Federal Reserve Bank of Boston Study 2

The State of Fair Housing 2

Supreme Court Jurisdiction

1. Murray seeks review of the First Circuit's order and judgment dated 12/3/96. The First Circuit's order dated 2/6/97 denies Murray's motions to undo the First Circuit's decision. On 2/24/97, Justice Suter extended the time to file a petition for a writ of certiorari to 5/2/97. Justice Suter's Clerk extended the time another 60 days in her letter dated 5/7/97. Rule 13 of the Supreme Court Rules establish this Court's jurisdiction. The District Court had jurisdiction over this matter pursuant to *28 U.S.C.A. § 1331, 28 U.S.C.A. § 1332, The Consumer Credit Protection Act 15 U.S.C.A. 1601-1700, The Fair Credit Reporting Act 15 U.S.C.A. § 1681p, The Equal Credit Opportunity Act 15 U.S.C.A. § 1691e(c)*, and *The Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.*

Summary of Key Cases, Statutes, and Authorities

2. The center of this case is the Consumer Credit Protection Act and its related sections, including the Fair Credit Reporting Act and the Equal Credit Opportunity Act. Notably the lower Courts' decisions conflicted with the following authorities: *FTC v. TRW, 784 F.Supp. 361 (N.D.Tex.1991). Compliance With The Fair Credit Reporting Act, written by The Federal Trade Commission (rev.2d ed. 1977). FTC v. Trans Union, D-9255. Cotto v. Jenney, 721 F.Supp. 5, 7, n. 2 (D.Mass.1989) citing: Koropoulos v. Credit Bureaus, Inc., 734 F.2d 37, 40 (C.A.D.C.1984). FTC v. TRW, 784 F.Supp. 361* provides:

- Consumer Reports Must Reflect Documentation from the Information Source, The Documentation Constitutes the Legal Accuracy: Agency must accept the consumer's version of the disputed information and correcting or deleting the disputed item, when the Consumer submits to TRW documentation obtained from the source of the item in dispute confirming that the disputed information on the Consumer Report was inaccurate or incomplete. *FTC v. TRW, 784 F.Supp. 361, 363, n. 3(a)(iii) (N.D.Tex. 1991).*
- Before Reinserting Previously Deleted Data Reporting Agencies Must Advise Consumer in Writing: Maintain reasonable procedures so that items disputed by a Consumer, which are deleted or corrected as inaccurate or unverifiable upon reinvestigation, do not subsequently appear on Consumer Reports pertaining to that Consumer. After TRW has deleted such information from the File, if TRW reverifies such information, TRW may reinsert such

information in the File and report such information on subsequent Consumer Reports concerning that Consumer if, and only if, TRW advises the Consumer in writing that the information has been reinserted. *FTC v. TRW, 784 F.Supp. 361, 363, n. 4(a) (N.D.Tex. 1991).*

3. Murray has also alleged violation of the Massachusetts Consumer Protection Act, which authorizes treble damages. Many novel areas of consumer protection and common-law applications to consumer protection are presented.

Statement of the Case

4. Murray alleges that Trans Union reinserted and fabricated derogatory information in his consumer reports in violation of *The Consumer Credit Protection Act, 15 U.S.C.A. §1601-1700* and common-laws. Trans Union made several fraudulent representations to Murray that information was deleted, but the information would reappear at a later time. For a list of the 34 separate items or acts disputed by Murray, see pages 3-4 of **Murray's First Amended Complaint Plus Supplemental Pleadings**.

5. In both lower Courts Murray presented the **Affidavit of Kelly E. Schaefer** (Trans Union's own employee), as evidence that Trans Union violated their own internal procedures to insure accuracy, make investigations, and to maintain reasonable procedures.

6. In both lower Courts Murray presented a senatorial report titled *Credit Reporting Abuses* and newspaper articles to support his claims that the respondents are engaging in a calculated reinsertion and fabrication of derogatory credit information. This evidence was ignored by both lower Courts and unrebuked by the respondents.

7. In both lower Courts Murray presented *The State of Fair Housing* and *The Federal Reserve Bank of Boston Study* as evidence of the disparate and disproportionate access to credit opportunities experience by blacks (See pages 33-34 of **Plaintiff's-Appellant's Corrected Brief**.) The respondents also claimed not to have knowledge of Murray's race or color—a claim in contradiction of the *FTC v. Trans Union, D-9255* decision's analysis of the contents of Trans Union's database, which was found to include ethnic identity. This evidence was ignored by both lower Courts and unrebuked by the respondents.

8. In both lower Courts Murray's 10-person survey evidence supported Murray's allegations against his creditor BP America and their employee Stevens. Stevens initially agreed to sign an affidavit in Murray's

behalf by saying "prepare the affidavit you require and forward it to me for my signature," but Stevens failed to sign an affidavit. Notable results of the survey are as follows:

- 70% said Stevens accepted signing an affidavit that expressed the same points in the 11/94 letters
- 70% said Stevens agreed the account was supposed to be closed, never placed for collection, and inaccurately placed for collection (43% of those said their belief was made stronger because BP changed Murray's BP account to indicate canceled at the consumer's request and because the 11/94 letters were not disputed for five months)
- 80% said "prepare the affidavit you require and forward it to me for my signature" meant Stevens would definitely sign the affidavit
- 50% said Stevens *more likely* lied, was pressured or bribed by Trans Union, or said what her company told her to say during her deposition
- 20% said Stevens *did* lie, was pressured or bribed by Trans Union, or said what her company told her to say during her deposition
- 100% said its possible that Trans Union illegally manufactured the CDV investigation form, which was used in Stevens's deposition, to support their case and the matter should be further investigated

9. Notable contradictions Trans Union and BP made during the litigation are as follows:

- On pages 35-36 of Stevens's Deposition Transcript, Stevens admits that on 9/21/92 BP made manual entries onto their computer system that "removed the canceled code 10, which indicates a paid in full collection, and changed it to the canceled code 01, which means, canceled at the customer's request."
- BP's letter dated 9/21/92 instructed the consumer reporting agencies to "Please correct the trade line on Mr. Murray's credit file to reflect the following information: Date Established: 08/87, Last Active: 03/90, Current Balance: 0, Amount Past Due: 0, Payment History: 18 months inactive. Any derogatory information regarding the BP account is to be removed immediately."
- Murray's letter dated 5/16/94 to Stevens states "Please send me written verification of the current status of my BP Oil account listed above. Include all references to past payment history." Stevens's letter dated 7/21/94 states "At present your account is inactive and

there is no balance owing. Over the past twelve months your account has been inactive 9 times and current 3 times."

- Stevens's letter dated 12/9/94 to Murray, which responded to Murray's letters dated 11/13/94 and 11/14/94 to BP, said "I am in receipt of both your November 13 and 14 letters and understand, from your letters, that you are currently engaged in litigation with Trans Union. Please have your attorney or the individual representing you prepare the Affidavit you require and forward it to me for my signature."
- BP's letter dated 5/8/95 instructed the consumer reporting agencies to take the following actions on Murray's BP rating: Please update your records to indicate the above listed account is paid to a current status. Due to extenuating circumstances, please delete all derogatory information from Mr. Murray's credit files regarding this account. A 24 month payment history reflects: Paid as agreed.
- On page 61 of Stevens's Deposition Transcript of 5/17/95, Stevens said she had not reviewed all of Murray's statements and payment history since 9/92 and was "not in a position" to testify if there had been any problems with the BP account since it was reopened on 9/21/92. (This statement is inconsistent with Stevens's own letter dated 7/21/94 that states "Over the past twelve months your account has been inactive 9 times and current 3 times" and BP's letter dated 5/8/95 that states "A 24 month payment history reflects: Paid as agreed.")
- Page 4 ¶ 11 of Darcy's affidavit falsely states that Murray said Citibank account 5424180222789866 was not his and that Citibank did not respond to Trans Union's investigation, but Murray made no such statement and Citibank did respond in their letter dated 6/25/92.
- Page 5 ¶ 14 of Darcy's affidavit falsely implies that Murray created a fragment file, but the evidence shows that Trans Union created a fragment file during the course of this litigation.
- Page 9 ¶ 25 of Trans Union's original Answer to the complaint and page 11 ¶ 36 of the Affidavit of Denise A. Darcy agree that "Trans Union states that it is without knowledge or information sufficient to form a belief as to the plaintiff's race or color, or whether he is a minority." But on page 5 ¶ 23 of the 1993 SUMMARY DECISION in *FTC v. Trans Union, D-9255*, it was determined that demographic information extracted from Trans Union's database, named CRONUS, reveals a person's "ethnic background."
- During the course of this lawsuit Trans Union defrauded the Court by claiming not to have a copy of Murray's first Exhibit D, which

proved Equifax/CBC and TRW deleted and never reinserted the BP information.

- Paragraph 1 of Murray's MEMORANDUM 1 dated 8/29/94 cites Trans Union, as saying, "When I got a copy of the complaint from my client they only had EXHIBIT B...and EXHIBIT D . . ." Additionally, ¶ 8 of MEMORANDUM 1 states "Plaintiff has furnished the defense EXHIBITS A, B, and D, as cited in the complaint . . ." Trans Union acknowledged reading and understanding MEMORANDUM 1 in their letter dated 8/30/94 in which they refer to the memorandum's "extensive quotation from our telephone conversation."
- Trans Union's ANSWER to the original COMPLAINT claims lack of knowledge to answer ¶ 13, last sentence, ¶ 23, sentence 3, and ¶ 41, sentence 2, but the sentences could have been answered because the knowledge to answer was contained in the first Exhibit D. Paragraph 6 of DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION 1: PARTIAL SUMMARY JUDGEMENT of 10/7/94 states "Trans Union was never served with a copy of EXHIBIT D." Paragraphs 5-8 of the opposition also claims lack of knowledge contained in Exhibit D. Paragraph 3 of Murray's letter dated 10/28/94 said that Trans Union had possession of Exhibit D at the FR 26(f) meeting of 10/26/94, but said they "didn't notice it" until the meeting.
- On pages 62-64 of Stevens's Deposition Transcript of 5/17/95, Trans Union said they had a CDV form in their possession signed with BP's fictitious name L.A. Berry. Murray was not present at Stevens's deposition. Trans Union's submission of the CDV form during the deposition is inconsistent with the fact they never submitted the form to Murray or filed it in Court in support of their motion for summary judgment or elsewhere before or after the deposition. Murray's survey evidence shows that 100% of the respondent believe the CDV form was fabricated and should be further investigated.

10. The District Court and the First Circuit Court of Appeals made repeated and extreme violations of civil procedure. Notable lower Court errors are as follows:

- Did the District Court err by (1) denying Murray's rights to file motions, (2) failing to allow three attempts to amendment the complaint, (3) failing to enforce automatic discovery, (4) failing to vacate the second discovery scheduling order, (5) failing to enforce

production, interrogatories, and admissions requests, (6) failing to allow Murray a single deposition, (7) failing to allow continuance, (8) failing to grant Murray's motion to compel and Murray's motion for sanctions, (9) failing to allow Murray to file his motion for default judgment for fraud, (10) failing to view summary judgment in the light most favorable to the nonmovant, Murray, and by (11) not allowing the jury to weigh the evidence.

- Did the First Circuit Court of Appeals err by (1) deciding sua sponte that Murray's case did not need an oral argument, (2) issuing a summary, unsigned, unpublished, and unargued affirmance, (3) allowing a judgment that was stamped but not signed by the clerk, (4) allowing Kogan and company to argue on appeal without (a) filing an application showing eligibility for membership, (b) without filing a notice of appearance, and (c) without receiving permission to argue pro hac vice, (5) by failing to decide Murray's motions for amendment, discovery, and sanctions on appeal, (6) failing to grant Murray's motion to strike all of Kogan's papers, i.e., Trans Union's entire defense on appeal, and by (7) deciding that Murray could not file additional papers, which prevented Murray's opposition to Marashian's motion for substitution of Reuben.

11. Trans Union's voluntary removal of the disputed information during the course of this lawsuit, Robinson and Cole's withdrawal on appeal, and the First Circuit's failure to sign the affirmation are strong inferences that Trans Union is aware they are liable, wants to escape further liability, and that Trans Union's lawyers are distancing themselves from possible disciplinary action for their fraudulent defense.

12. The main documents in the record from the Court of Appeals that fully state Murray's position as of this date are: (1) **Plaintiff-Appellant's Corrected Brief**, (2) **Reply Brief for Appellant Murray**, (3) **Murray's First Amended Complaint Plus Supplemental Pleadings**, (4) **Murray's Motion to Compel and Continue Discovery**, and (5) and **Murray's Motion for Sanctions**. The named documents contain a full and complete disclosure of the authorities that support Murray's allegations. See pages 39-49 of **Plaintiff-Appellant's Corrected Brief** for the inconsistencies, frauds, and lies made by Trans Union and BP America over the course of this litigation.

13. Trans Union received Murray's demand letter pursuant to the Massachusetts Consumer Protection Act, but failed to make the required settlement offer. As a result, Trans Union stands to be hit with treble damages calculated against 10% of their ultimate parent company's net worth.

Authorities and Argument Concerning Signature, Opinion, Publication, Oral Argument, and Lack of Procedural Due Process

14. Official Orders Require Signature: *M.G.L.A. c. 272, Sec. 99. Com. v. Bickford, 471 N.E.2d 1295, 393 Mass. 1006 (Mass. 1984).* Lack of Judge's Signature on Court Papers Warranted Vacatur of the Paper: *Zuckerman v. Aetna Life and Casualty Co., 1981 Mass.App.Div. 63 (Mass.App.Div. 1981).* Where There is No Judicial Signature There is No Judicial Action: *Rudnicki v. Gottlieb, 15 Mass.App.Dec. 63 (Mass.App.Div. 1957).* Judge's Signature Authenticates Papers: *Barton v. Automobile Ins. Co. of Hartford, Conn., 63 F.2d 631, certiorari denied 53 S.Ct. 786, 289 U.S. 755, 77 L.Ed. 1499 (C.C.A.1 (Mass.) 1933).* All Papers Must Be Signed: *Federal Rules of Civil Procedure, Rule 7.* Unsigned Papers Shall Be Stricken: *Federal Rules of Civil Procedure, Rule 11.* An Opinion is Used When the Decision Calls for More Than a Summary Explanation: *Federal Rules of Appellate Procedure, Rule 36, First Circuit Local Rule 36.1.* Opinion Publication is Desirable: *Federal Rules of Appellate Procedure, Rule 36, First Circuit Local Rule 36.2.* The Supreme Court Has Sanctioned the Practice of Deciding Cases Without an Opinion: *Taylor v. McKeithen, 1972, 92 S.Ct. 1980, 407 U.S. 191, 32 L.Ed.2d 648, conformed to, C.A.5th, 1874, 499 F.2d 893.* Oral Argument is Preferred: *Federal Rules of Appellate Procedure, Rule 34, First Circuit Local Rule 34.1.* Lack of Due Process Voids Judgment: *U.S.C.A. Const.Amend. 14. Eastern Sav. Bank v. City of Salem, 597 N.E.2d 55, 33 Mass.App.Ct. 140, review denied 600 N.E.2d 1000, 413 Mass. 1106 (Mass.App.Ct. 1992).* Parties May Be Relieved from Void Judgments: *Federal Rules of Civil Procedure, Rule 60.* Court is Not Permitted to Enter Judgment on Fewer than All the Claims of the Parties: A judgment as to fewer than all parties or all claims is not a final, appealable decision. *Fed.R.Civ.P. 54(b).*

15. The First Circuit's affirmation of 12/3/97 was summarized, unsigned, unpublished, and unargued, thus, it should be vacated and sanctioned because it (1) carries no legal force, (2) did not give an opinion on numerous novel legal theories of recovery against credit reporting agencies, (3) did not opinion on many credit reporting laws that are untested in Massachusetts, and (4) the failure to sign the affirmation is itself evidence of the merits of Murray's case. The Supreme Court must correct or reverse on these grounds alone. In addition, the First Circuit, like the District Court, failed to decide all claims.

Authorities and Argument Concerning Withdrawal of Counsel

16. No Attorney Who Has Entered an Appearance in this Court May Withdraw Without the Consent of the Court: *Federal Rules of Appellate Procedure Rule 46, First Circuit Local Rule 46.4.* Actions Warranting Mandatory Withdrawal: *ABA Model Code of Professional Responsibility, DR 2-110.* A Lawyer Shall Withdraw to Prevent Violations of Rules of Professional Conduct and Other Laws: *ABA Model Rules of Professional Conduct, Rule 1.16.* A Lawyer May Withdraw Because of His Client's Fraud: *ABA Model Rules of Professional Conduct, Rule 1.16.* Lawyers Cannot Violate Laws for Their Clients: *ABA Canons of Professional Ethics, Canon 15.* Lawyers Must Restrain Their Clients from Improprieties: *ABA Canons of Professional Ethics, Canon 16.*

17. Robinson and Cole's Harvard Attorney, Catherine E. Reuben, initially withdrew her appearance without permission of the Court and without properly noticing Murray of her withdrawal. Trans Union did not give Murray notice because it would have been obvious that they had lost their last hope for credibility. After Murray's motion to strike all of Trans Union's second attorney's (Kogan) papers from the record, the Court allowed Reuben to withdraw as the result of a motion filed by Trans Union's third attorney Marashian. Reuben's withdrawal attests to the merits of Murray's case.

Authorities and Argument Concerning Appearance of an Attorney

18. An Attorney Shall File an Application for Admission to the Court of Appeals Showing Eligibility for Membership: *Federal Rules of Appellate Procedure, Rule 46(a).* Upon Admission to the Court of Appeals An Attorney Shall Pay a $10.00 Fee: *Federal Rules of Appellate Procedure Rule 46, First Circuit Local Rule 46.1. Internal Operating Procedures of the First Circuit Procedure II.* Appellee's Failure to File a Brief Warrants Default Judgment: *Federal Rules of Appellate Procedure Rule 46(c), First Circuit Local Rule 45.*

19. Kogan failed to file his application, failed to pay the $10.00 fee, and failed to request permission to argue pro hac vice. Thus, Trans Union has no authentic defense on appeal whatsoever and Murray is entitled to default judgment. After Murray's motion to strike Kogan, which was denied in error, Marashian filed the proper notices for his own appearance on appeal.

Authorities and Argument Concerning Maximum Accuracy

20. Cases Adopting the Technically Accurate Defense Were Misread by Previous Courts and Out of Line With Congressional Intent: *Koropoulos v. Credit Bureaus, Inc., 734 F.2d 37, 39,40 (C.A.D.C. 1984).* The Technically Accurate Defense Has Been Universally Criticized by Courts and Commentators: *Koropoulos v. Credit Bureaus, Inc., 734 F.2d 37, 41 (C.A.D.C. 1984)* The State of Massachusetts Has Rejected the Technically Accurate Defense and Follows *Cotto, Koropoulos,* and *Thompson*: *Cotto v. Jenney, 721 F.Supp. 5, 7, n. 2 (D.Mass.1989) citing: Koropoulos v. Credit Bureaus, Inc., 734 F.2d 37, 40 (C.A.D.C.1984). Thompson v. San Antonio Retail Merchants Ass'n, 682 F.2d 509, 513 (C.A.Tex.1982).* A Technical Truth Can Be as Misleading as an Outright Untruth Where it Paints an Incomplete Picture: *Swoager v. Credit Bureau of Greater St. Petersburg, Florida, 608 F.Supp. 972, 977, n. 3-4 (D.C.Fla. 1985).* Technically Accurate Reports are Legally Inaccurate if They are Not Accurate to the Maximum Possible Extent: *Houston v. TRW Information Services, Inc., 707 F.Supp. 689 (S.D.N.Y. 1989). Alexander v. Moore & Associates, Inc., 553 F.Supp. 948 (D.C.Hawaii 1982).* FCRA Demands Maximum Possible Accuracy: *Fair Credit Reporting Act, § 607(b), 15 U.S.C.A. § 1681-1681e(b).* U.S. Congress Demands Maximum Possible Accuracy: *116 Cong. Rec. 35940, Sen. Proxmire (1970).* Reporting Agency's Failure to Assure Maximum Possible Accuracy Warrants Summary Judgment for the Consumer as a Matter of Law: *The Fair Credit Reporting Act, 15 U.S.C.A. § 1681e(b). Alexander v. Moore & Associates, Inc., 553 F.Supp. 948 at 953 (D.C.Hawaii 1982).* Consumer Reports Must Reflect Documentation from the Information Source. The Documentation Constitutes the Legal Accuracy: *FTC v. TRW, 784 F.Supp. 361, 363, n. 3(a)(iii) (N.D.Tex.1991).*

21. Trans Union's entire case has been built around *The Accuracy Defense*. Cases adopting the technically accurate defense were misread and Massachusetts has previously ruled against the accuracy defense. If one goes deeper than the headnotes of some cases, one can determine that such orders were given under special circumstances or completely misread the FCRA. Even if a report was 100% accurate, the consumer would have the right to have obsolete information removed or to have his own 100-word statement added to his rating. To say there is no case without *inaccuracy* would preclude cases for failure to remove obsolete information and cases for failure to add the 100-word statement. Under the FCRA, *accuracy* only precludes defamation, invasion, and negligence claims. Murray's evidence proves that the disputed information was not maximally accurate and Murray is entitled to summary judgment.

Authorities and Argument Concerning
Due Process Requirements for Consumer Reporting Agencies

22. Accurately Reporting Information Received from Creditors Does Not Constitute Compliance to Insure Accuracy—Evaluation Duty Exists: *Stevenson v. TRW, Inc., 987 F.2d 288 at 293 n. 2-3 (C.A.5 Tex. 1993). Swoager v. Credit Bureau of Greater St. Petersburg, 608 F.Supp. 972 (D.C.Fla. 1985). Bryant v. TRW, Inc., 487 F.Supp. 1234, affirmed 689 F.2d 72 at 78 Division 2 (D.C.Mich.1982).* When Creditor-Consumer Dispute Exist and Reinvestigation Cast Doubt on Information, it is Unreasonable for Agencies to Rely Solely on Creditor's Biased Viewpoint: *Swoager v. Credit Bureau of Greater St. Petersburg, Florida, 608 F.Supp. 972, 976, n. 3-4 (D.C.Fla. 1985).* Compliance With the FCRA is Required Regardless of the Fraud or Misrepresentation of the Consumer: *Kiblen v. Pickle, 653 P.2d 1338, 33 Wash.App. 387 (Wash.).* The FTC Requires Reporting Agencies to Reevaluate Information With the Passage of Time: *Compliance With The Fair Credit Reporting Act, written by The Federal Trade Commission (rev.2d ed. 1977). Houston v. TRW Information Services, Inc., 707 F.Supp. 689 (S.D.N.Y. 1989). Mcphee v. Chilton, 468 F.Supp. 494, 497 (D.Conn.1978).*

23. FCRA cases are mainly questions of *due process*, accuracy is a secondary issue. The question is whether or not the agency followed the FCRA, not whether or not the information is accurate or inaccurate. In comparison, in *Miranda* rights cases the question is *due process* (was he read his rights) not whether or not he robbed the bank. In habeas corpus cases the question is *due process* (did he get a fair trial) not his guilt or innocence.

Authorities and Argument Concerning Failure to Argue

24. It is the Duty of an Attorney to Research the Law and to Present the Court with Citations to Controlling Legal Authority: *ABA Code of Professional Responsibility, Canon 7; EC7-23. Vargas v. McNamara, 608 F.2d 15 (C.A.1 (Mass.) 1979).* Arguments Without Amplification and Authorities are Insufficient: *Rules for the Regulation of Practice before Full Court, Rule 13. Com. v. Agiasottelis, 142 N.E.2d 386, 336 Mass. 12 (Mass. 1957).* Failure to Argue Issues or Defenses on Appeal Constitutes Waiver: *Rules App.Proc., Rule 16(a)(4), 43B M.G.L.A. Walsh v. Chestnut Hill Bank and Trust Co., 607 N.E.2d 737, 414 Mass. 283 (Mass. 1993).* Inappropriate Arguments Justify Sanctions: *Rules App.Proc., Rule 25, 43B M.G.L.A. Symmons v. O'Keeffe, 644 N.E.2d 631, 419 Mass. 288 (Mass. 1995).*

25. For the past three years Trans Union has only argued that the BP information was "accurate" when there are many other allegations about other

creditor accounts and Trans Union's acts. The lower Courts' errors will not excuse Trans Union's failure to argue the other allegations. Thus, any defenses that Trans Union could have invented for the other allegations are waived because Murray's contentions stand unrebuked. Murray would be prejudiced if Trans Union were allowed to argue the other allegations after three years of Trans Union's voluntary silence.

Conclusion

26. Five critical facts are undisputed: (1) Trans Union has removed the disputed BP information, the AIC information, the inaccurate address, and the inaccurate separate credit report (fragment file) as a direct result of this successful lawsuit; (2) Trans Union and their legal counseling got caught red-handed in their plan to defraud the District Court by claiming they did not receive the original Exhibit D that proves TRW and Equifax/CBC removed and never reinserted the disputed BP information; (3) Trans Union made fools of themselves by reinserting the AIC information in Murray's files twice during the course of this legal action; (4) Trans Union's Harvard attorney withdrew on appeal; and (5) Trans Union's and the credit reporting industry's tactics, against working American families, undermine the credit system, the banking system, and public confidence and are the source of continuing public outrage as indicated by the following excerpts from Murray's *Consumer Reporting New Articles* and *Credit Reporting Abuses* evidence:

Consumer Reporting News Articles

- **Page 8:** New York Newsday 6/14/94 reported that errors in credit reports were the No. 1 source of complaints to the FTC.
- **Page 13:** The Washington Post 10/24/93 reported that Rep. Joseph P. Kennedy (D-Mass) said, "a responsible consumer [is] turned into a credit deadbeat at the touch of a computer keyboard."
- **Page 15:** The Washington Post 10/24/93 reported that Rep. Joseph P. Kennedy (D-Mass) said, "the industry that collects those reports holds an awesome power over the lives of American citizens."
- **Page 50:** The Dallas Times Herald 10/25/91 reported that Texas Attorney General Dan Morales said, "We have examined the inner workings of the industry and found them stacked against the legitimate interests of American consumers," and that "credit firms drag their heels in correcting mistakes and routinely reinsert many of those errors back into consumers' files after they had been deleted."

- **Page 62:** Newsweek Magazine 10/28/1991, page 42, published an article about the consumer credit reporting industry and the title of that article referred to the consumer credit reporting agencies as "Consumer Enemy No. 1."

Credit Reporting Abuses

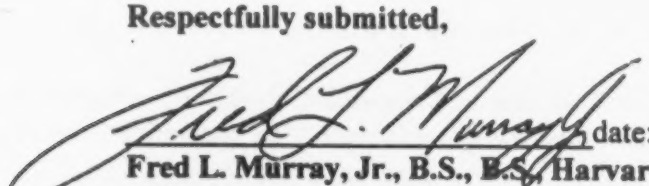
- **Page 17 (Dick Riley):** The Retail Credit Co. does [want a quota of adverse information]. It's a selling point. If you can tell the insurance company, "here is the number of reports we do, here is the number we develop adverse information on," otherwise the insurance companies would not bother to get our reports, if we gave them favorable reports all of the time.
- **Page 18 (Mark S. Brodie):** The reason they [use a quota system], Senator, is for their advertising campaigns; when their advertising representatives go to the various insurance companies and attempt to formulate contracts with those companies for Retail Credit, they brag that our percentage of declinables or adverse information is higher than others.
- **Page 18 (Dick Riley):** Sometimes the insurance companies will play two competitors against each other. Retail Credit Co. against his nearest competitor, whoever will give them the most adverse information shows they are doing the better job, consequently they get the contract for the remainder of the year.
- **Page 18 (Len O. Holloway):** I think the essence of it is the implication is simply, Retail Credit makes the case that because they develop *x* number of adverse cases, they saved them from future losses. That is their point.
- **Page 18 (Mark S. Brodie):** I believe that in the published hearings of October 1 through 5, there is a reference to a memorandum passed on to a Retail Credit Co. in California last year that said, "our declinables are up and as a result we have gotten this contract with so and so insurance company."
- **Page 27 (Mark S. Brodie):** Another dubious policy of the company is a consumer interview, see attached form 143T4, which is used when an applicant [is denied] coverage as a result of a Retail Credit Co. report and he in turn comes to the branch office for an explanation. He is asked to fill out form 143T4 before he can review his file. He never actually views his file as only portions of it are quoted to him. I have been at some of these interviews and have seen instances where certain derogatory information is omitted during the

review and is not read to the poor consumer who is sitting on the other side of the desk (usually the assistant manager in each branch office handles this detail). The subject sometimes leaves the office still not knowing why he has been refused insurance or a job.

- **Page 5 (Dick Riley):** Retail Credit Co. does have a quota system and each inspector is required to fill out a daily No. 930 report. Retail Credit Co. has determined that 10 percent of all individuals investigated should be declined and that 50-60 percent of all cases investigated should have a protective feature of some type. Any field representative who fails to meet his daily quotas is then put on probation and if he still fails to meet his quotas, he is fired.
- **Page 7 (Dick Riley):** A field representative is not paid to reinvestigate a report if it was found that he was in error originally. A good man will try his best to dig up some type of adverse information in order to look good on the reinvestigation and, in this manner, he will also be repaid for the report. The Fair Credit Reporting Act has not materially changed the reporting practices of Retail Credit Co. We were constantly informed at the weekly office meetings that the company "can live with it as Mr. Burge helped to formulate the requirements for the act."
- **Page 11 (Len O. Holloway):** At the time I began my employment there I knew nothing of the activities of retail credit companies, but I was shortly thereafter surprised and sometimes shocked as the full range of their programs unfolded. It was not so much that this company operated with an evil intent, but simply that the "size of it all" led to unwitting disregard for the individuals they were hired to investigate.

FOR THE FOREGOING REASONS, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit.

Respectfully submitted,



date: 7/5/97

Fred L. Murray, Jr., B.S., B.S., Harvard C.S.S. (Pro Se)
1770 Mass Avenue #190
Cambridge, MA 02140
(617) 958-1517

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

May 7, 1997

Fred L. Murray
1770 Massachusets Avenue
#190
Cambridge, MA 02140

RE: Fred L. Murray, Jr. v. Harmon Holdings, Inc., et al.

Dear Mr. Murray:

Returned are 39 of the 40 copies of a petition for a writ of certiorari in the above-entitled case postmarked on May 1, 1997 and received on May 2, 1997, which fails to comply with the Rules of this Court.

If you intend to pay the $300 docket fee, the petition must be on paper that is 6 1/8 by 9 1/4 inches as stated in Rule 33.1(d).

The appendix to the petition as required by Rule 14 must be on paper that is 6 1/8 by 9 1/4 inches as stated in Rule 33.1(d).

The cover of the petition must bear the nature of the proceeding and the name of the Court from which the action is brought. Rule 34.1(e).

Rule 33.1(c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

The designations of "Plaintiff-Appellant" and "Defendant-Appellee" must be removed from the cover of the petition. The date, and "Appeals Court Civil Action 9601385 District Court Civil Action 94-11442-RGS" must be removed from the cover of the petition.

If the petition exceeds five pages, a table of contents and table of cited authorities must be included after the questions presented for review. Rule 14.1.

Kindly redo the petition and appendix so that it complies in all respects with the Rules of the Court and return it to this office promptly so that it may be docketed. Unless the petition is received by this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

This office shall retain one copy of the petition and your money order in the amount of $300.00 in expectation of receipt of a properly prepared petition.

Enclosed is a copy of the Rules of the Court and memorandum concerning the preparation of a petition.

Sincerely,
William K. Suter, Clerk
By: /s/ Ruth Jones
Ruth Jones
(202) 479-3022

Enclosures

cc: Mardic Marashian

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

February 24, 1997

Mr. Fred L. Murray Jr.
1770 Mass Avenue
#190
Cambridge, MA 02140

Re: Fred L. Murray, Jr.
v. Trans Union Corporation
Application No. A-603

Dear Mr. Murray:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on February 24, 1997, extended the time to and including May 2, 1997.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By: /s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Fred L. Murray, Jr.
1770 Mass Avenue
#190
Cambridge, MA 02140

Ms. Catherine E. Reuben
Robinson & Cole
One Boston Pl., 25th/26th Fls.
Boston, MA 02108-4404

Clerk
United States Court of Appeals for
the First Circuit
1606 John W. McCormack Bldg.
Boston, MA 02109

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-1385

FRED L. MURRAY, JR.,
Plaintiff, Appellant,

v.

TRANS UNION CORPORATION,
Defendant, Appellee.

Before
Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
and Judge Stahl, Circuit Judge.

ORDER OF COURT

Entered February 6, 1997

This appeal was terminated by a judgment that issued on December 3, 1996, and mandate issued on January 13, 1997. Appellant has filed a motion to strike all papers filed by the law firm Marion, Satzverg, Tricon & Kogan. This motion, like appellant's previous motion to stay the proceedings and objection to this court's summary affirmance, effectively seeks to undo this court's decision on grounds that are wholly frivolous. Accordingly, the motion to strike is denied. As this appeal has been terminated and the time for filing a petition for rehearing has expired, the clerk is directed to return any further filings which appellant attempts to submit under this docket number.

By the Court:
/s/ William H. NG
Clerk.

[cc: Mr. Murray and Ms. Reuben]

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-1385

FRED L. MURRAY, JR.,
Plaintiff, Appellant,

v.

TRANS UNION CORPORATION,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Richard G. Stearns, U.S. District Judge]

Before

Selya, Cyr and Stahl,
Circuit Judges.

Fred L. Murray on brief pro se.
Mark E. Kogan, Bruce S. Luckman, Marion, Satzberg, Trichon & Kogan, P.C. and Robinson & Cole on brief for appellee.

December 3, 1996

Per Curiam. Pro se plaintiff Fred L. Murray appeals a district court order that granted defendant Trans Union Corporation summary judgment on Murray's complaint for violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681e(b) and 1681i(a) and (c), the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, and various common law claims. This court has thoroughly reviewed the record and the parties' claims on appeal. We agree that summary judgment was properly entered for the reasons stated in the district court's memorandum and order.[1] Accordingly, the judgment of the district court is summarily affirmed. See Local Rule 27.1. Murray's motion for sanctions, motion to compel and continue discovery, and motion to amend district court complaint and add supplemental pleading are denied.

/unsigned/

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[1] We add that the record fails to establish a violation of 15 U.S.C. §1681i.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-1385

FRED L. MURRAY, JR.,
Plaintiff-Appellant,

v.

TRANS UNION CORPORATION,
Defendant-Appellee.

JUDGMENT

Entered: December 3,1996

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By The Court:

/ink stamp/ William H. NG

Clerk

[cc: Messrs. Murray and Kogan]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NUMBER 94-11442-RGS

FRED L. MURRAY, JR.
v.
TRANS UNION CORPORATION

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

February 12, 1996

STEARNS, D.J.

This case arises from a dispute over a credit rating. The antagonists are the plaintiff, Fred L. Murray, Jr., and Trans Union Corporation, one of the nation's largest credit reporting agencies. Trans Union compiled Murray's credit history and sold it to potential creditors. Murray, who is very attentive to matters of credit, requested that Trans Union delete what Murray believed was a misleading report that his British Petroleum credit card account had been "placed for collection." Trans Union complied. Unfortunately for present purposes, Trans Union's fix did not stick. The negative report, after being expunged, mysteriously reappeared in Trans Union's records, where it remained for some 22 months despite Murray's efforts to have it erased. Frustrated by Trans Union's intractability, Murray sued. Before the court is Trans Union's motion for summary judgment.

FACTS

The material facts, viewed in the light most favorable to the plaintiff as the nonmoving party, are these. Trans Union gathers credit histories on some 170 million consumers. It sells this information to creditors, some of whom use it to market "pre-approved" credit. Trans Union compiles credit information from magnetic billing tapes supplied by various creditors. While Trans Union has "safety" procedures in place to ensure the integrity of its record keeping, it receives it does not verify the accuracy of the information provided by creditors. It relies instead on the self-interest of its correspondent suppliers and the vigilance of individual consumers like Murray. Trans Union employs over 300 persons whose job it is to investigate consumer complaints.

In August of 1987, BP America, a corporate affiliate of British Petroleum, solicited Murray in a mass credit card mailing. Murray responded and was issued card no. 521282640. The credit agreement required Murray to pay any outstanding balance in full on receipt of his monthly statement.[1] Murray misunderstood the payment terms and failed to make timely payments. BP placed the account with a collection agency on March 26. 1990. That information was conveyed to Trans Union which classified the account as a "9B," or "collection account." Murray, who is proud of his meticulous (and ordinarily successful) handling of his credit obligations, eventually paid the collection

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[1]The credit agreement signed by Murray states in the space immediately adjacent to the signature line that "I understand that PAYMENT OF ACCOUNT IS DUE AND PAYABLE UPON RECEIPT OF MONTHLY STATEMENT.... My acceptance and use of any card(s) issued will indicate that I agree to the terms and conditions accompanying the card(s)." See Plaintiff's Appendix I in support of his Opposition Memorandum, attachment 8. (Emphasis in original).

agency the $63.85 that BP insisted that he owed. That information was forwarded to and recorded by Trans Union, which continued to list the account as an historical "9B" with a zero balance.

Disturbed that his otherwise unblemished credit history was now marred by a "placed for collection" notation, Murray attempted to convince BP that his failure to comply with the terms of the credit agreement was caused by BP's misleading explanation of its terms. Murray requested that BP reopen his account and remove the "placed for collection" notation. Beginning in June of 1991, Murray wrote a series of lepers to BP in which he claimed that a BP representative had orally agreed to extend payments on the account while he looked for a new job. Murray insisted that BP admit its error to all credit reporting companies. In a letter dated January 27, 1992, BP responded by stating that "[w]e can extend a payment arrangement to a customer who has difficulty in keeping our terms. However, we must report in fairness to other creditors the manner in which an account was paid. . . . .Therefore, Mr. Mu ay, we cannot negotiate historical data." See Plaintiffs Appendix 1, attachment 8. Murray's complaint to the Better Business Bureau elicited a similar response from BP. Id. After Murray wrote to Rodney Chase, the President of BP America threatening to file a complaint with the Federal Trade Commission, BP relented and wrote Murray as follows on September 21, 1992.

> Upon receipt of your letter to Mr. Chase, your complete file was again reviewed. While we still feel that the terms under which your BP account was opened were clearly stated, we want to try to be responsive to the fact that, for whatever reason, you did not understand them and give you the "second chance" that you have requested.

> Enclosed you will find a copy of the letter we have sent to all the credit bureaus to whom we report directing them to change your BP payment history as shown. I have also enclosed a copy of our monthly billing statement and would ask that you carefully review the terms disclosure on the reverse side of the statement. Please then sign and return this letter in the envelope provided and I will be happy to reopen your account and send you a new card.

The letter BP sent to credit reporting agencies, including Trans Union, asked that "[a]ny derogatory information regarding [Murray's] BP account" be erased and that the account be listed with a zero balance and a payment history showing it as inactive for 18 months. Plaintiff's Appendix 1, attachment 8. BP did not concede to Trans Union (or anyone else) that the account had been improperly placed for collection. In fact, BP's representative stated at BP's deposition that

> [e]ven though the information that we were reporting was accurate and correct . . . it was an economic decision [to report a new status for the account] based on the stream of correspondence that we received from Mr. Murray, and the fact that he was now threatening to involve us in a complaint with the FTC. At this point, as I said, it was an economic decision.

Meanwhile, Trans Union, at Murray's request, had included in his credit history a "consumer statement" indicating that Murray was disputing the accuracy of the BP report. Trans Union is unable to determine what action, if any, it took in response to BP's September 21, 1992 letter requesting that Murray's account history be changed, but in October of 1992 Trans Union deleted all information regarding the BP account from its records, including Murray's consumer statement. In November of 1992, Trans Union loaded a new billing tape obtained from BP. Following this event, for reasons that remain shrouded in mystery, the previously deleted BP information reappeared in Trans

Union's records. [2] Although Murray received a copy of the new Trans Union report in October of 1993, he did not complain to Trans Union until April, 1994. Trans Union responded by adding a consumer statement to the report, but did not delete the BP account from its records.

On July 18, 1994 Murray filed this Complaint pro se, alleging malicious and willful noncompliance with the Fair Credit Reporting Act (FCRA) (Counts I, II, III, and IV); defamation (Count V); invasion of privacy (Count VI); gross negligence (Count VII); Equal Credit Opportunity Act violations (Count VIII); fraud (Counts IX and X); and unjust enrichment (Count XI). Upon being served with the Complaint, Trans Union contacted BP, confirmed that BP wished to have the information deleted, and expunged the entries from its records. Between May of 1991 and the date the disputed entries were finally excised, only Wachovia Bank, Educational Loan Services, and Murray himself received copies of his credit report. Educational Loan Services used the report solely to update Murray's address, while Wachovia Bank relied upon the report in denying Murray's application for a credit card in part because Murray (according to the Trans Union report) had excessive credit obligations and in part because of the delinquent BP account. The negative rating also cost Murray the opportunity of being solicited in mass mailings offering pre-approved credit.

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[2]Trans Union contends that the offending information was re-reported to it on the tapes provided by BP. For its part, BP claims that its internal encoding system should have made it impossible for the tapes to contain the uncorrected version of Murray's account, a claim buttressed by the fact that the account status was correctly reported by Equifax/CBC and TRW (two of Trans Union's [competitors]) after October, 1992.

THE SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when, based upon the pleadings, affidavits, and depositions, "there is no genuine issue as to any material fact, and [where] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c), Gaskell v. Harvard Cooperative Society, 3 F.3d 495, 497 (1st. Cir. 1993). "To succeed, the moving party must show that there is an absence of evidence to support the nonmoving party's position." Rogers v. Fair, 902 F.2d 140, 143 (1st. Cir. 1990). "As to issues on which the nonmovant has the burden of proof, the movant need do no more than aver 'an absence of evidence to support the nonmoving party's case.' The burden of production then shifts to the nonmovant, who, to avoid summary judgment, must establish the existence of at least one question of fact that is both `genuine' and `material.'" In Re Varrasso, 37 F.3d 760, 763 n. 1 (1st Cir. 1994), (citations omitted). "In this context, `genuine' means that the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party." Rodriguez-Pinto v. Tirado-Delgado, 982 F.2d 34, 38 (1st Cir. 1993). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 249-250 (1986) (citations omitted).

THE FAIR CREDIT REPORTING ACT

The FCRA requires that:

> [w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

15 U.S.C. § 1681e(b). An aggrieved consumer may bring a cause of action under the Act against

> [a]ny consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed by this subchapter with respect to any consumer . . . [for] an amount equal to . . . any actual damages sustained by the consumer as a result of the failure.

15 U.S.C. § 1681o(1). Thus, when "[r]ead together, these provisions allow a consumer to bring suit for a violation of section 1681(e)(b) only if a credit reporting agency includes inaccurate data in a consumer's credit history, and the agency issues an inaccurate report" to a potential credit granter who relies on the erroneous information to the detriment of a consumer. Koropoulos v. Credit Bureau, Inc., 734 F.2d 37, 39 (D.C. Cir. 1984). Even if a credit reporting agency does report false information, a consumer may sue the credit reporting agency only if he can show that the agency failed to use "reasonable procedures" in the preparation of his credit report. Hussain v. Carteret Sav. Bank, F.A., 704 F. Supp. 567, 569 (D.N.J. 1989); Stewart v. Credit Bureau, Inc., 734 F.2d 47, 51 (D.C. Cir. 1984).

DISCUSSION

The premise of Murray's case is that "the BP data was inaccurately placed for collection, entirely false since September 1992, inaccurate, not maximally accurate, corrected as inaccurate, incomplete as to create false impressions, unverifiable, and questionable." Opposition Memorandum, at 2. Because the premise is faulty, namely that the information reported by Trans Union was false, Murray's case fails.[3]

[3]Even if Murray could show that the BP information was not only false but negligently reported by Trans Union, he has not shown that he can prove any economic damages

Two critical facts are undisputed: (1) that Murray failed to comply with the payment terms of his BP account; and (2) that BP placed the account for collection. No matter how sincere Murray's belief that his misunderstanding about the unambiguous payment terms is the fault of BP, there is nothing in the record from which a finder of fact could reasonably conclude that BP acted improperly in reporting the fact that the account had been "placed for collection" to Trans Union, or that Trans Union acted improperly in placing the information in Murray's credit history. Murray's argument that "BP's unconditional reopening of the account under the same account number and the terms of their leper dated 21 September 1992 constitutes acceptance that the account was inaccurately placed for collection," Opposition Memorandum, at 30, misses the point. So does Murray's argument that BP has impliedly accepted blame for the dispute. Id. at 33.

Because the negative information regarding the BP account was accurate at its inception, it is immaterial that Trans Union continued to report it after BP requested that it be deleted, or that Trans Union later reinserted it. "Although a credit reporting agency has a duty to make a reasonable effort to report `accurate' information on a consumer's credit history, it has no duty to report only that information which is favorable or beneficial to the consumer." Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151,1158 (11th Cir. 1991). Moreover, even if Trans Union could be shown to be solely responsible for the re-posting of the BP account, Murray's allegations that this error was intentional, or the result of unreasonably lax procedural safeguards, is unsupported by

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that he sustained as a result.

any fact in the record other than conjecture born out of frustration at Trans Union's bureaucracy. See Dow v. United Brotherhood of Carpenters, 1 F.3d 56, 58 (1st Cir. 1993). Counts I-IV of the Complaint will therefore be dismissed.

Murray's claim under the Equal Credit Opportunity Act 15 U.S.C. § 1691 (ECOA) is also subject to dismissal. As a preliminary matter, the allegation that Trans Union, by reporting the credit-worthiness of consumers to credit grantors, thereby itself becomes a "creditor" within the meaning of the Act is dubious.[4] In any event, no evidence is offered that Murray was denied credit as a result of his race, color, or national origin, as the Act requires. Count VIII will therefor be dismissed.

The remaining counts are also unsustainable. Murray's claims for defamation, invasion of privacy, and gross negligence fail for the reason that they are preempted by section 1681h(e) of FCRA.

> Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency . . . except as to false information furnished with malice or willful intent to injure such consumer.

Because the information regarding Murray's credit history was true, there are no facts that would support a finding of malice or willful intent to injure. Consequently, Counts V, VI, and VII will be dismissed. Count IX alleges that Trans Union committed fraud by intentionally deleting the original BP account so that when it was reopened, it would

[4] Section 1691a(e) of the ECOA states: "[t]he term `creditor' means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in a decision to extend, renew, or continue credit."

appear without any notation of Murray's consumer statement. Even assuming that this allegation states a claim of fraud, there is no evidence of any intentional act on the part of Trans Union. In Count X Murray attempts to recover damages from Trans Union for the fraud allegedly perpetrated on creditor grantors who relied on what they thought was accurate information reported to them by Trans Union. Murray lacks standing to bring these claims. Count XI, which seeks recovery from Trans Union for unjust enrichment, is subject to dismissal because Murray has failed to adduce evidence supporting the essential elements of the claim. There is no evidence that Trans Union acquired any benefit from reporting the offending data, or if it did, that it enriched itself at Murray's expense. See Salamon v. Terra, 394 Mass. 857, 859 (1985).

ORDER

For the foregoing reasons, Trans Union's motion for summary judgment is ALLOWED.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRED L. MURRAY, JR.
V.
TRANS UNION CORPORATION

CIVIL ACTION NO.
94-11442-RGS

JUDGMENT

STEARNS, DJ. FEBRUARY 12, 1996

In accordance with this Court's Memorandum and Order on Defendant's Motion for Summary Judgment entered this date in the above-captioned action,

IT IS HEREBY ORDERED: Judgment is entered in favor Of the defendant, TRANS UNION CORPORATION.

SO ORDERED.

RICHARD G. STEARNS
UNITED STATE DISTRICT JUDGE

BY: /s/ Mary Johnson Robbins
Deputy Clerk

Supreme Court, U.S.
FILED
AUG 6 1997
CLERK

No. 97-51

In The

Supreme Court of the United States

October Term, 1996

FRED L. MURRAY, JR.,

Petitioner,

vs.

TRANS UNION CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Trans Union Corporation is a Delaware corporation and a member of the Marmon Group and has no subsidiaries. The shares of Marmon and TUC are not publicly traded.

TABLE OF CONTENTS

	Page
Statement Pursuant to Rule 29.6	i
Table of Contents	ii
Table of Citations	ii
Reasons for Denying the Writ	1
A. Introduction.	1
B. Statement Of The Case.	1
C. Proceedings In The District Court And The Court Of Appeals.	3
Conclusion	9

TABLE OF CITATIONS

Cases Cited:

Boothe v. TRW Credit Data, 768 F. Supp. 434 (S.D.N.Y. 1991) 4

Cahlin v. General Motors Acceptance Corporation, 936 F.2d 1151 (11th Cir. 1991) 4, 5, 6, 7, 8

Casella v. Equifax Credit Information Systems, 56 F.3d 469 (2nd Cir. 1995) 7

Grays v. Trans Union Credit Information Co., 759 F. Supp. 390 (N.D. Ohio 1990) 5

Contents

	Page
Houston v. TRW Information Services, 707 F. Supp. 689 (S.D.N.Y. 1989)	5
Hussain v. Carteret Savings Bank, F.A., 704 F. Supp. 567 (D. N.J. 1989)	5
Koropolous v. Credit Bureau, Inc. 734 F.2d 37 (D.C. Cir. 1984)	4, 7
Morris v. Credit Bureau of Cincinnati, 563 F. Supp. 962 (S.D. Ohio 1983)	5
National Labor Relations Board v. Pittsburgh Steamship Co., 71 S. Ct. 453 (1951)	1
Stevenson v. TRW, Inc., 987 F.2d 288 (5th Cir. 1993)	5
Stewart v. Credit Bureau, Inc., 734 F.2d 47 (D.C. Cir. 1984)	4
Taylor v. Freeland & Kronz, 112 S. Ct. 1644 (1992)	1
Wright v. TRW Credit Data, 588 F. Supp. 112 (S.D. Fla. 1984)	5

Statutes Cited:

15 U.S.C. § 1681, *et seq.*	*passim*
15 U.S.C. § 1691, *et seq.*	3

REASONS FOR DENYING THE WRIT

A. Introduction.

This is a routine matter arising under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (the "FCRA"). No novel questions were involved in this action and well-established precedent determined the outcome.

None of the many questions presented for review is an appropriate basis for the grant of certiorari. Moreover, the alleged conflict among the circuits on the issue of "accuracy", does not exist.[1] Simply put, petitioner has presented no question of law of "importance to the public as distinguished from that of the parties" which is appropriate for review by this Court. *National Labor Relations Board v. Pittsburgh Steamship Co.*, 71 S. Ct. 453, 455 (1951).

B. Statement Of The Case.

In August, 1987, petitioner applied for and obtained a credit card account from BP America ("BP"). The explicit terms of the account called for payment in full upon receipt of a monthly bill. Petitioner failed to make timely payments and the account was placed in collection. This information was furnished by BP to various consumer reporting agencies including respondent, Trans Union Corporation ("TUC"). The BP account was

1. Significantly, of the twelve questions presented for review, only the issue of "accuracy" is pressed in the argument portion of petitioner's brief. Issues under "FCBA, FDCPA and TILA," (VI); the alleged "fiduciary relationship" between consumer reporting agencies and consumers (VII) and the question whether "there was an implied acceptance of petitioner's version of the dispute" (VIII) were not previously raised and are not addressed in petitioner's Brief. *See Taylor v. Freeland & Kronz*, 112 S. Ct. 1644, 1649 (1992) ("ordinarily this Court does not decide questions not raised or resolved in the lower court(s)".)

classified in petitioner's TUC consumer file as a "9B" collection account. Petitioner eventually paid the $63.85 outstanding balance to the collection agency. Thereafter, TUC modified its records to reflect the payment.

Petitioner does not contest his ownership of the BP account or that the account was placed for and paid while in collection. Petitioner's sole claim was that the account should never have been placed in collection. He argued that his failure to comply with the explicit terms of the credit agreement was caused by BP's misleading explanation of its terms and an alleged oral agreement with BP. Petitioner repeatedly badgered BP to have the adverse BP account information removed from his consumer file. BP repeatedly denied his requests.

In July, 1992, at petitioner's request, TUC placed a consumer statement in his consumer file indicating that he disputed the accuracy of the BP account information.[2] In September, 1992, in direct response to a threat of litigation by petitioner, BP made an "economic decision" to delete the derogatory BP account from petitioner's consumer file and instructed the consumer reporting agencies, including TUC, accordingly. TUC modified petitioner's file and removed the consumer statement because the referenced collection account had been deleted.

BP did not remove the "collection account" status from the tapes it submitted to TUC. As a result, the new tapes reinstated the "collection" reference on TUC's records.[3] Wachovia Bank

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2. Petitioner's Brief mentions a Citibank (petitioner's Brief, p. 4) and AIC account (petitioner's Brief, p. 11) which he disputed to TUC. However, these accounts were never the subject of this litigation.

3. In general, creditors, including BP, submit account update information to TUC via magnetic tapes which TUC downloads directly into its system.

("Wachovia") was the only creditor to receive a TUC report after the re-inclusion of the collection account denotation. However, petitioner presented no proofs that Wachovia would have treated his application differently had the collection account not been reported. Thus, TUC accurately reported the disputed BP account and petitioner failed to prove that he suffered any damages as a result of the furnishing of credit information by TUC.

C. Proceedings In The District Court And The Court Of Appeals.

Petitioner filed the instant complaint, pro se, alleging malicious and willful noncompliance with the FCRA, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.* ("ECOA") and various state law claims. By Memorandum and Order dated February 12, 1996, the District Court granted TUC's motion for summary judgment and entered judgment in its favor. (A. 9-18). On December 3, 1996, the United States Court of Appeals for the First Circuit affirmed the judgment and adopted the reasoning of the district court. In addition, the court of appeals held that the record failed to establish a violation of § 1681i. (A. 6-8). Petitioner's lawsuit arises solely from TUC's reporting of the BP account as "placed for collection."[4] Petitioner contends that TUC was not entitled to report the BP account as placed for collection because his failure to pay the account was a result of his contract dispute with TUC. Based on the foregoing, petitioner

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4. Murray's contentions in support of his petition for writ of certiorari are contained in paragraphs 14 through 25 of his petition. (petitioner's Brief, p. 7-11). Paragraphs 14 and 15 allege illegality of the circuit court opinion; paragraphs 16 through 18 allege improprieties with respect to appearance of counsel; paragraphs 22 and 23 assert incomprehensible due process violations; and paragraphs 24 and 25 concern the nature of TUC's response to arguments in the court below. TUC respectfully submits that none of the foregoing is a basis for the Court's review and that petitioner's arguments are without merit or legal foundation.

alleged, inter alia, violations of the FCRA. The District Court correctly decided that petitioner's claims must fail because the information reported by TUC was accurate and because he did not prove any harm. (A. 15).

The fundamental question below was whether TUC had accurately reported the BP account information. Dispositively, the District Court found that:

> Two critical facts are undisputed: (1) that Murray failed to comply with the payment terms of his BP account; and (2) that BP placed the account for collection. (A. 16).

In *Cahlin v. General Motors Acceptance Corporation*, 936 F.2d 1151 (11th Cir. 1991), the Court held:

> In order to make out a *prima facie* violation of [§ 1681e(b)], the [FCRA] implicitly requires that a consumer must present evidence tending to show that a credit reporting agency prepared a report containing "inaccurate" information. [footnote omitted] **If he fails to satisfy this initial burden the consumer, as a matter of law, has not established a violation of [§ 1681e(b)] and a court need not inquire further as to the reasonableness of the procedures adopted by the credit reporting agency**. *Cahlin, supra*, 936 F.2d at 1156. (emphasis supplied).

Those principles are consistent with a long line of authority. *Koropolous v. Credit Bureau, Inc.* 734 F.2d 37, 39 (D.C. Cir. 1984); *Stewart v. Credit Bureau, Inc.*, 734 F.2d 47, 51 (D.C. Cir. 1984); *Boothe v. TRW Credit Data*, 768 F. Supp. 434, 437 (S.D.N.Y. 1991) ("If the information is accurate, no further inquiry into the reasonableness of the consumer reporting

agencies procedures is necessary."); *Houston v. TRW Information Services*, 707 F. Supp. 689, 691 (S.D.N.Y. 1989); *Grays v. Trans Union Credit Information Co.*, 759 F. Supp. 390, 393 (N.D. Ohio 1990); *Hussain v. Carteret Savings Bank, F.A.*, 704 F. Supp. 567, 569 (D. N.J. 1989); and *Wright v. TRW Credit Data*, 588 F. Supp. 112, 114 (S.D. Fla. 1984) ("it is axiomatic that no claim can be stated under [the FCRA] unless plaintiff demonstrates that the report he challenges was inaccurate.")

Petitioner also wrongly claims that the re-inclusion of the account constituted an FCRA violation. Here again, the **accuracy** of the information controls:[5]

> Because the negative information regarding the BP account was accurate at its inception, it is immaterial that Trans Union continued to report it after BP requested that it be deleted, or that Trans Union later reinserted it. "Although a credit reporting agency has a duty to make a reasonable effort to report 'accurate' information on a consumer's credit history, it has no duty to report only that information which is favorable or beneficial to the consumer."

[Quoting *Cahlin, supra*, 936 F.2d at 1158] (A. 16).[6]

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5. The re-reporting of information here must be distinguished from the re-reporting of inaccurate information deleted **because** it was inaccurate. *Morris v. Credit Bureau of Cincinnati*, 563 F. Supp. 962 (S.D. Ohio 1983) and *Stevenson v. TRW, Inc.*, 987 F.2d 288 (5th Cir. 1993). Here, the information re-reported was **not inaccurate** and was removed by BP only to avoid litigation.

6. The District Court also appropriately dismissed petitioner's claim under ECOA as entirely frivolous. TUC was not a "creditor" as defined by the ECOA and petitioner did not prove he was denied a loan because of his race color or national origin. (A. 17). Likewise, his state law "unjust enrichment" claim was properly dismissed because, not surprisingly, he had no proof that TUC "enriched itself at [petitioner's] expense" by reporting the BP account. (A. 18).

Petitioner's assertion that BP's business decision rendered the information inaccurate is erroneous. A similar contention was expressly rejected in *Cahlin, supra*. There, Cahlin claimed that a consumer reporting agency was required to "cease reporting any derogatory information" after settlement of a disputed account. *Cahlin, supra*, 936 F.2d at 1158. However, the instructions to remove:

> any derogatory information about Cahlin's account were largely motivated by a desire to mollify Cahlin and avoid potential ligation, not to correct any reporting errors. . . . Thus from GMAC's perspective Cahlin's account would have been most accurately reported if it had been carried as a charged off account that was later paid off.

Cahlin, supra, 936 F.2d at 1158. The Court held that continued reporting that the disputed debt had been charged off was "accurate" and "not actionable under the FCRA." *Cahlin, supra*, 936 F.2d at 1160.

Similarly, the District Court appropriately highlighted the fact that BP never regarded the account information as inaccurate. The Court credited the undisputed testimony of BP's representative that:

> [e]ven though the information that we were reporting was accurate and correct . . . it was an *economic decision* [to report a new status for the account] based on the stream of correspondence that we received from Mr. Murray, and the fact that he was now threatening to involve us in a complaint with the FTC. At this point, as I said, it was

> an economic decision. (Emphasis added). (A. 12).

In short, the reporting and re-reporting of the account as "placed for collection" were equally accurate.[7]

Irrespective of "accuracy" considerations, petitioner's claims against TUC must fail because he offered no proof that he was harmed by TUC's manner of reporting of the BP account. In this connection, the District Court correctly determined that:

> Even if Murray could show that the BP information was not only false but negligently reported by Trans Union, he has not shown that he can prove any economic damages. (A. 15).

As succinctly stated in *Cahlin*,[8] *supra*:

> We need not reach the substance of Cahlin's FCRA claims against TRW because we find that he has utterly failed to produce any evidence tending to show that he was damaged as a result of an allegedly inaccurate TRW credit report. . . . We stress that Cahlin had the affirmative duty of coming forward with evidence supporting his claim that TRW's

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7. Petitioner's reliance on *Koropolous, supra*, is misplaced. There, the Court of Appeals held that summary judgment was inappropriate in the face of testimony by plaintiff's expert that the information, although technically accurate, would have misled prospective creditors to plaintiff's detriment. Instantly, plaintiff offered no evidence that TUC's report was misleading or, in fact, misled anyone.

8. *See also Casella v. Equifax Credit Information Systems*, 56 F.3d 469, 474 (2nd Cir. 1995) (rejecting plaintiff's claims "due to a lack of causation between the harm alleged . . . and alleged violations of the FCRA.")

> alleged inaccurate report caused him harm . . . *Cahlin, supra*, 936 F.2d at 1160-61.

The foregoing is equally compelling here.

The FCRA's dispute/reinvestigation provision, § 1681i, requires "a *factual* deficiency or error that could have been remedied by uncovering additional facts." *Cahlin, supra*, 936 F.2d at 1160. No additional investigation by TUC would have undermined the accuracy of the information it reported concerning the BP account. As such, petitioner's claims under FCRA § 1681i also failed.

The District Court also correctly dismissed petitioner's claims for defamation, invasion of privacy, and gross negligence based on the undisputed accuracy of the information reported and FCRA § 1681h(e) which bars:

> any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency . . . except as to false information furnished with malice or willful intent to injure.

Accordingly, "[b]ecause the information regarding [petitioner's] credit history was true, there are no facts that would support a finding of malice or willful intent to injure." (A. 17).

CONCLUSION

For all of the foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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